

STATE OF MICHIGAN  
COURT OF APPEALS

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In the Matter of DESHAUN DUNBAR-  
WILDMAN, Minor.

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

MARY DUNBAR-WILDMAN,

Respondent-Appellant.

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UNPUBLISHED  
October 21, 2008

No. 280472  
Genesee Circuit Court  
Family Division  
LC No. 04-118920-NA

Before: Meter, P.J., and Hoekstra and Servitto, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court order terminating her parental rights to the minor child under MCL 712A.19b(3)(g) and (j). We affirm.

The trial court may terminate a parent's parental rights to a child if the court finds that the petitioner has proven one of the statutory grounds for termination by clear and convincing evidence. MCL 712A.19b(3); *In re Trejo Minors*, 462 Mich 341, 350; 612 NW2d 407 (2000). "If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights." MCL 712A.19b(5); see also *Trejo, supra* at 350. We review a trial court's decision to terminate parental rights for clear error. MCR 3.977(J); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999). A finding is clearly erroneous when we are left with the firm and definite conviction that a mistake was made. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

At the beginning of this case, in November 2004, respondent's then ten-year-old daughter Natalie was placed in the court's temporary custody after respondent was arrested, charged with possession of cocaine and resisting arrest, and admitted using cocaine while Natalie was with her. On May 4, 2005, respondent gave birth to DeShaun. Both DeShaun and respondent tested positive for cocaine after the birth. The court subsequently placed DeShaun in its temporary custody. Initially, respondent failed to treat her substance abuse. She was terminated from family drug court in October 2005 for noncompliance, and her visits with the children were suspended in March 2006 because she showed up late for visits, failed to complete drug screens, and did not provide documentation concerning her substance abuse group meetings or counseling

attendance. Petitioner subsequently filed a supplemental petition on July 25, 2006, seeking termination of respondent's parental rights to Natalie and DeShaun under MCL 712A.19b(3)(c)(i), (g), and (j). Trial was adjourned several times and commenced on May 17, 2007, nearly a year after the filing of the supplemental petition seeking termination.

At trial, the psychologist who performed the psychological evaluation of respondent in February 2005 testified that he believed that, if respondent addressed her substance abuse, she would be able to effectively parent the children. Respondent's caseworker, Rodney Berry, testified that respondent had completed inpatient substance abuse treatment in August 2006 (on her third attempt) and that she had consistently submitted negative drug screens between August 2006 and mid-April 2007. Respondent had also been providing documentation of her attendance at least three times a week at 12-step meetings, although Mr. Berry questioned the authenticity of later documentation due to the fact that although the signatures bore different dates and were in different colored ink, they appeared to be the same handwriting. When questioned about the documentation, respondent indicated that she lost the original documentation and had to recreate it herself. According to Mr. Berry, he had received no documentation concerning attendance at 12-step meetings since March of 2007.

Mr. Berry did not feel that respondent had addressed her drug abuse issues, noting that she continued to act defensively and avoid responsibility. Mr. Berry also contended that respondent had failed to substantially comply with her parent-agency agreement, pointing to the fact that she did not have safe and suitable housing or a legitimate means of income. Mr. Berry noted that plaintiff had moved approximately six times in an eight month period and that while plaintiff had once provided him with a pay stub from Little Caesar's showing 12 hours work in a pay period, plaintiff had not consistently provided a source of income that would serve to support her and two children. Mr. Berry also felt that, although respondent had completed parenting classes in December 2005 (on her fifth attempt), there was no opportunity to observe her interaction with the children to see if she had benefited from classes because her parenting time had been suspended (due to plaintiff's failure to appear for parenting time and failure to complete drug screens).

Respondent testified that she had not used illegal substances since February 2006, had submitted all requested screens between August 2006 and April 2007, all of which came back negative, attended group meetings several times a week, had housing, and had been employed part time at Little Caesars since mid-January 2007. Respondent's sponsor testified that respondent was committed to sobriety, had been sober for several months preceding the trial, and attended 12-step meetings regularly. Respondent's brother and boyfriend testified that respondent was committed to her sobriety and regaining custody of the children. Respondent's sister-in-law, a Little Caesar's manager, testified that she had employed respondent since January of 2007 and respondent was a good worker.

The court elected to delay rendering its opinion to allow respondent to visit with each of the children. At an August 1, 2007, hearing, Mr. Berry testified that, although respondent's visits with DeShaun were initially very concerning, they had improved significantly over time. However, Mr. Berry continued to be concerned that respondent appeared overwhelmed by DeShaun's level of activity, behavior, and need for attention, noting that respondent was observed swearing under her breath on two occasions. He conceded she interacted appropriately

with the child and never yelled or physically disciplined him. Although respondent missed two screens because she moved several times and allegedly did not receive the requests, all submitted screens were negative. Mr. Berry expressed concern that respondent had stopped attending individual mental health counseling (because of insurance issues), stopped taking her antidepressant for the same reason, and had some anger management issues, noting that she had a falling out with her brother and sister-in-law, who she had identified as part of her support group.

The court subsequently dismissed the termination petition as it pertained to Natalie, finding that termination was contrary to her best interests, but did terminate respondent's parental rights with respect to DeShaun. On appeal, respondent contends that the evidence did not support termination of her parental rights to DeShaun under either of the statutory grounds cited by the court. We disagree.

Termination of parental rights under § 19b(3)(g) requires clear and convincing evidence that the parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent would be able to do so within a reasonable time considering the child's age. The evidence in the instant case shows that DeShaun tested positive for cocaine at birth and continues to suffer the effects of cocaine withdrawal. DeShaun required physical therapy and continues to attend other types of therapy (speech, occupational) to address his delays. De Shaun experiences tremors, has difficulty eating, sleeps in only 90 minute increments, and is difficult to console. Due to her continuing substance abuse, respondent's parenting time was suspended, and respondent did not have contact with DeShaun from the time of his birth until he was two years old.

Recognizing that respondent had, at the time of trial, made significant recent strides in addressing her substance abuse problems and was employed on a part-time basis, we cannot ignore that plaintiff had stopped attending counseling, contrary to her parent-agency agreement and had recently moved yet again. We agree with the trial court that respondent would likely be unable to properly care for DeShaun, given that his special needs required nearly 24-hour care and respondent also has to address her sobriety efforts on a daily basis, her reunification with her daughter, and maintain employment and suitable housing for the children. Respondent had been unsuccessful, for a significant period of time, in addressing the housing issue and her substance abuse problem and, considering that she had only limited contact with DeShaun, there is no reasonable expectation that respondent would be able to properly care for DeShaun within a reasonable time, considering his age.

Termination under § 19b(3)(j) requires clear and convincing evidence that there is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if returned to the home of the parent. In the instant case, the trial court again noted that DeShaun had special needs that would require 24-hour care. Given the facts that the child was born with cocaine in his system as a result of respondent's actions, that respondent appeared overwhelmed by his needs and was still addressing her own sobriety, that respondent was unable to maintain sobriety or housing for the year preceding the termination hearing, that respondent was unable to complete inpatient substance abuse until her third attempt and respondent was unable to complete parenting classes until her fifth attempt, we cannot conclude that the trial

court clearly erred in finding that the statutory grounds for termination set forth in 19b(3)(j) were met. Accordingly, we affirm.

/s/ Patrick M. Meter

/s/ Joel P. Hoekstra

/s/ Deborah A. Servitto